



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/064,637	08/01/2002	Andrew J. Boron	716139.99	5337

27128 7590 07/25/2003

BLACKWELL SANDERS PEPER MARTIN LLP  
720 OLIVE STREET  
SUITE 2400  
ST. LOUIS, MO 63101

EXAMINER

NOVOSAD, JENNIFER ELEANORE

ART UNIT PAPER NUMBER

3634

DATE MAILED: 07/25/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/064,637

Applicant(s)

BORON, ANDREW J.

Examiner

Jennifer E. Novosad

Art Unit

3634

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 01 August 2002.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-25 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-25 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 01 August 2002 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

### Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 2.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

## **DETAILED ACTION**

### ***Claim Objections***

Claim 18 is objected to because it appears that a word is missing after "base unit" in line 18. Appropriate correction is required.

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 7 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The recitation "said product retention openings having a dimension less than the width of a product container" in lines 5-7 of claim 7, renders the claim indefinite. In particular, a container is not an element of the claimed device and it is improper to seek to define claimed structure based on a comparison to some unclaimed element. In this case, the boundaries of the claim cannot be properly ascertained because one would not know whether their device infringed the instant claim until someone else later added a container. Accordingly, the features of the device, itself, must be defined instead of relying upon a comparison with an ascertained element.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-4, 7, 12, 16, and 17 are rejected under 35 U.S.C. 102(b) as being anticipated by Varfolomeeva '387.

Varfolomeeva '387 discloses a display rack (see Figure 2) comprising a first unit (from the middle of Figure 2 to the bottom) having a plurality of first upright support members (36 and 34) and being adaptable to rest on the floor (at 30); a second unit (from the middle of Figure 2 to the top) having a plurality of second upright support members (36 and 34) and the second unit being adaptable to be supported by the first unit; connectors (ends of each of elements 36 and 34) cooperating with the first and second support members for removably attaching the first and second units together; a plurality of shelf members (12) associated with each of the first and second units; the display rack further comprising a header assembly (at 20) for displaying indicia thereon and the header assembly including a plurality of connector members, i.e., stakes, cooperatively engageable with the support members of the second unit for removably supporting the header assembly thereon, i.e., in sockets in the second unit; the display rack having front and rear *portions*, i.e., the sides of the display rack are considered to define portions; and the first unit, i.e., the base unit, comprising at least one brace member (at 26) secured to a rear portion thereof..

Art Unit: 3634

*With respect to claim 2*, the connectors include both elements (36 - in the middle of Figure 2) which define stakes associated with the first unit and elements 34 (on the second shelf from the top) which define sockets associated with the second unit.

*With respect to claim 3*, the connectors include both elements (36 - in the middle of Figure 2) which define stakes associated with the second unit and elements 34 (on the second shelf from the bottom) which define sockets associated with first unit.

*With respect to claim 7 (insomuch as the claim is best understood in view of the Section 112 rejection, as advanced above)*, the shelf members (12) including a product organizer member defining a plurality of channels having a product retention opening at the front of each channel.

*With respect to claim 12*, the first unit (subassembly) includes sockets (34 - attached to the third shelf from the top) at one end and stakes (36 - at the bottom of Figure 2) on the other end; the second unit (subassembly) includes sockets (34 - attached to the top shelf) at one end and stakes (36 - in the middle of Figure 2) at the other end.

Claims 1, 3, 11, 12, and 16 are rejected under 35 U.S.C. 102(b) as being anticipated by Gessert '577.

Gessert '577 discloses a display rack (see Figure 7) comprising a first unit (110) having a plurality of first upright support members (36) and being adaptable to rest on the floor (at 58); a second unit (10) having a plurality of second upright support members (36) and the second unit being adaptable to be supported by the first unit; connectors (see Figure 4) cooperating with the first and second support members for removably attaching the first and second units together whereby each support member has a stake at one end a socket at the other end (see Figure 4); a

Art Unit: 3634

plurality of shelf members (12') associated with each of the first and second units; the display rack having front and rear *portions*; the first unit including brace members (34) extending between the uprights to reduce side-to-side flexing.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Varfolomeeva '387, alone.

Varfolomeeva '387 discloses the display rack as advanced above.

The claim differs from Varfolomeeva '387 in requiring the connectors of the header assembly to define sockets which engage stakes of the support members of the second unit.

Although Varfolomeeva '387 discloses the connectors on the header assembly to be stakes, it would have been an obvious design choice to one of ordinary skill in the art at the time the invention was made to have fabricated the connectors of the header assembly as sockets and the second unit to have stakes, engageable therewith, for ease in economy, manufacture, and assembly (see MPEP 2144.04(VI)(A)).

Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over Varfolomeeva '387 as applied to claims 1-4, 7, 12, 16, and 17 above, and further in view of Webb '880.

Varfolomeeva '387 discloses the display rack as advanced above.

The claim differs from Varfolomeeva '387 in requiring the header assembly to include a panel removably mounted thereto.

Webb '880 teaches a display rack having a header assembly (at 80) which includes a panel (60) removably mounted thereto.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have provided the header assembly of Varfolomeeva '387 with a removable panel for ease in use to the consumer since the information on the panel can be updated, changed, etc. when desired.

Claims 8 and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Varfolomeeva '387 as applied to claims 1-4, 7, 12, 16, and 17 above, and further in view of Lee '170.

Varfolomeeva '387 discloses the display rack as advanced above.

The claim differs from Varfolomeeva '387 in requiring the shelf members to include a first member including a product support surface and a second member defining spaced wire members forming guide rails that is removably attached to the first member.

Lee '170 teaches a display rack comprising shelf members which include a first member (at 120) including a product support surface and a second member (at 30) defining spaced wire members forming guide rails that is removably attached to the first member.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have provided the shelf members in the display rack of Varfolomeeva '387 with first and second members, as taught by Lee '170, for increased organizational capabilities while increasing support of items placed therein.

Art Unit: 3634

Claims 9, 10, 14, and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gessert '577 as applied to claims 1, 3, 11, 12, and 16 above, and further in view of Bustos '191.

Gessert '577 discloses the display rack as advanced above.

The claims differ from Gessert '577 in requiring a plurality of side shelf members removably attachable in a cantilever manner to some of the support members of each unit.

Bustos '191 teaches a display rack comprising side shelf members (20) that are removably attachable (at 13) to support members (11b).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have provided the display rack of Gessert '577 with side shelf members, as taught by Bustos '191 for increased organizational and storage capacity and capabilities.

Claims 18-25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Varfolomeeva '387 in view of Webb '880, Simard '098 (U.S. Patent Application Publication), and Lee '170.

Varfolomeeva '387 discloses the display rack as advanced above.

The claims differ from Varfolomeeva '387 in requiring: (a) the header assembly to include a panel removably mounted thereto (claim 18); (b) a plurality of side shelf members removably attachable in a cantilever manner to some of the support members of each unit (claim 18); (c) the shelf members to have a removably attachable product organizer (claim 18); and (d) the connectors of the header assembly to define sockets which engage stakes of the support members of the second unit (claim 21).

*With respect to (a)*, Webb '880 teaches a display rack having a header assembly (at 80) which includes a panel (60) removably mounted thereto.



Art Unit: 3634

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have provided the header assembly of Varfolomeeva '387 with a removable panel for ease in use to the consumer since the information on the panel can be updated, changed, etc. when desired.

*With respect to (b)*, Simard '089 teaches a display rack comprising side shelf members (see Figure 2) that are removably attachable to the units in a cantilevered manner.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have provided the display rack of Gessert '577 with side shelf members, as taught by Bustos '191 for increased organizational and storage capacity and capabilities.

*With respect to (c)*, Lee '170 teaches a display rack comprising shelf members which include a first member (at 120) including a product support surface and a second member (at 30) defining spaced wire members forming guide rails that is removably attached to the first member.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have provided the shelf members in the display rack of Varfolomeeva '387 with first and second members, as taught by Lee '170, for increased organizational capabilities while increasing support of items placed therein.

*With respect to (d)*, although Varfolomeeva '387 discloses the connectors on the header assembly to be stakes, it would have been an obvious design choice to one of ordinary skill in the art at the time the invention was made to have fabricated the connectors of the header assembly as sockets and the second unit to have stakes, engageable therewith, for ease in economy, manufacture, and assembly (see MPEP 2144.04(VI)(A)).

Art Unit: 3634

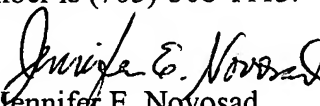
***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Battaglia *et al.*, Zucker *et al.*, Sickles, Chang *et al.*, Robertson, and Bianco show various display racks.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jennifer E. Novosad whose telephone number is (703)-305-2872. The examiner can normally be reached on Monday-Thursday, 5:30am-4:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Daniel P. Stodola can be reached on (703)-308-2686. The fax phone numbers for the organization where this application or proceeding is assigned are (703)-305-3597 for regular communications and (703)-305-3597 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703)-308-1113.

  
Jennifer E. Novosad  
Examiner  
Art Unit 3634

Jennifer E. Novosad/jen  
July 18, 2003